No. 83-2126

IN THE SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM, 1981

THE STATE OF OKLAHOMA,

Petitioners,

v.

TIMOTHY R. CASTLEBERRY AND
NICHOLAS RAINERI,

Respondents.

ON WRIT OF CERTIORARI TO THE
OKLAHOMA COURT OF CRIMINAL APPEALS

BRIEF FOR THE PEOPLE OF THE STATE OF CALIFORNIA AS AMICUS CURIAE IN SUPPORT OF REVERSAL

JOHN K. VAN DE KAMP,
Attorney General
ROBERT R. GRANUCCI,
Assistant Attorney General
CLIFFORD K. THOMPSON, JR.
Deputy Attorney General
RONALD E. NIVER
Deputy Attorney General
6000 State Building
San Francisco, CA 94102
Telephone: (415) 557-2653
Attorneys for Petitioner

30pp

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QUESTION PRESENTED

Whether, when officers arrest a suspect on probable cause, and the suspect, who is standing next to the vehicle, is able to place a container inside the vehicle, the police may search the container as being a search incident to arrest.

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INTEREST OF THE PEOPLE OF THE STATE OF CALIFORNIA

Since this Court's decision in United States v. Chadwick, 433 U.S. 1 (1977), the law governing the search of

containers has been unsettled and uncertain. California's peace officers, like those of Oklahoma, seek "bright lines" to aid them in determining quickly and accurately whether a container which has been lawfully seized may be searched without a warrant, or whether the primacy of the warrant requirement necessitates the approval of a neutral and detached magistrate. This case presents an opportunity to this Court to resolve unanswered questions concerning the legality of the search of a container in the context of a lawful custodial arrest. Our interest in clarifying this aspect of search and seizure jurisprudence, which is vitally relevant to the day-to-day conduct of police officers, brings the People of the State of California before this Honorable Court as amicus curiae.

SUMMARY OF ARGUMENT

New York v. Belton, 453 U.S. 454 (1981), held that a container found in the immediate control of an arrestee may be searched as an incident to a lawful custodial arrest. The question presented by this case is whether the legality of such a search may be defeated by the arrestee's attempt to place the object to be searched out of his reach (and that of the officer) in response to the officer's lawful approach. Amicus does not believe that an arrestee may increase his reasonable expectation of privacy by a desperate attempt to discard or lock away an object which was in his possession, and the proper subject of a search, before he encountered the arresting officer. Where, as here, the arrestee places the object in a vehicle, which itself is surrounded by a reduced expectation of

privacy, the officer may seize the object and search it as an incident to arrest.

ARGUMENT

THE CONTAINERS WHICH THE DEFENDANTS TRIED TO PLACE BEYOND THE CONTROL OF THE OFFICERS WERE PROPERLY SEIZED AND SEARCHED WITHOUT A WARRANT.

A

Since each search must be decided on its own facts, we set forth the relevant facts which were stated in Castleberry v. State, 678 P.2d 720, 722 (Okla. Ct. Crim. App. 1984):

> "At approximately noontime on June 9, 1981, Oklahoma City Police Officer R. D. Taylor, received a telephone call from a previously unknown confidential informant who told him that two men, one named Castleberry, were staying in Room 113 of a motel in Oklahoma City, driving a blue Thunderbird with Florida license plates and carrying various narcotics in blue suitcases. The informant also gave physical descriptions of the men to the officer.

> "Officer Taylor proceeded immediately to the location, observed a vehicle matching the informant's description in front of the specified room, and discovered, from the motel clerk, that a man named Castleberry was registered in that room. He then returned to his car, positioned some five parking spaces from the other vehicle, and waited for back-up assistance to arrive. After several minutes, Officer Taylor observed the appellants emerge from the room and put several suitcases that matched the informant's description into the trunk of the car. At this point, Officer Taylor announced himself as a police officer, approached the car with his badge in one hand and his weapon in the other, and told the appellants to place their hands on the car. Raineri did as ordered, but Castleberry hastily closed the trunk lid and threw a small white object into the car. During a struggle which ensued between Officer Taylor and Castleberry, Castleberry reached up, locked the car door and shut it.
>
> "At this point, Officer Citty arrived and opened the trunk of the car with keys Officer Taylor had removed from the door of the car. The officers opened the suitcases, found narcotics and placed the

appellants under arrest. Officer Citty then searched the interior of the car and discovered a white Band-Aid box which contained a substance later determined to be cocaine."

B

To be candid, the law governing the search of containers has been less than a seamless web since this Court's decision in United States v. Chadwick, 433 U.S. 1 (1977). Basically, the law is as follows:

(1) Chadwick held that a container which is reasonably believed to be the repository of criminal evidence may be seized without a warrant, but that a warrant must be secured before police search the receptacle. This base-line doctrine is subject to the following major exceptions:

(2) If the container is found in the immediate possession of an

arrestee, it may be searched without a warrant, either on the spot (New York v. Belton, 453 U.S. 454 [1981]), or at the station house (Illinois v. Lafayette, 462 U.S. 640 [1983]; United States v. Edwards, 415 U.S. 800 [1974]). If the arrestee is the occupant of an automobile, "immediate possession" has been defined to include the passenger compartment of the car (New York v. Belton, supra), but not the trunk (id. at 461 n. 4; See Robbins v. California, 453 U.S. 420 [1981]).

(3) Since a car may be searched without a warrant if police have probable cause to believe that it contains evidence of crime (Carroll v. United States, 267 U.S. 132 [1925]; Chambers v. Maroney, 399 U.S. 42 [1970]), this Court held that probable cause also "justifies the search of every part of the vehicle and its

contents that may conceal the object of the search." United States v. Ross, 456 U.S. 798, 825 (1982).

(4) However, the exception defined in Ross is itself subject to an exception: If probable cause focuses upon a container, its placement in a car does not justify the warrantless search of the receptacle. Arkansas v. Sanders, 442 U.S. 753 (1979). The reasoning of this Court was that the presence of the car was merely fortuitous. Since probable cause attached only to the container, not to the vehicle, the rule of Chadwick was dispositive.

C

Resolution of the issue posed by this case depends in the first instance upon an accurate classification of the search. For the reasons stated by the Chief Justice in his concurrence in Sanders, we do not believe that this case

involves the "automobile" exception to the warrant requirement:

> "Here, as in Chadwick, it was the luggage being transported by respondent at the time of the arrest, not the automobile in which it was being carried, that was the suspected locus of the contraband. The relationship between the automobile and the contraband was purely coincidental, as in Chadwick. The fact that the suitcase was resting in the trunk of the automobile at the time of respondent's arrest does not turn this into an 'automobile' exception case." 442 U.S. at 767.

However, it does not follow, as the Oklahoma Court of Criminal Appeals held, that this case is governed by Sanders. Rather, we believe that this case may be best understood as involving a search incident to a valid custodial arrest.

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(1)

It is clear that if defendants had been arrested[1/] while carrying the suitcases and Band-Aid box, those receptacles could have been searched on the spot. New York v. Belton, supra; Chimel v. California, 395 U.S. 752 (1969). However, Officer Taylor did not identify himself until defendants had placed the suitcases in the trunk, presumably because he wanted to verify that part of the tip regarding the blue Thunderbird with Florida license plates. If Castleberry had obeyed the officer's commands by placing his hands on the car, the box on his person could have been seized and searched.

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1. The informant's tip, combined with the officer's observations, provided probable cause to arrest the defendants. Cf. Massachusetts v. Upton, 466 U.S. ___, 104 S.Ct. 2085 (1984); Illinois v. Gates, 462 U.S. 213 (1983); Draper v. United States, 358 U.S. 307 (1959).

We believe that the suitcases could also have been searched without a warrant, for both men were within reach of the open trunk. It is true that this Court in Belton declared that its holding "does not encompass the trunk" (453 U.S. at 461 n. 4), but that case presented a significantly different factual situation. Belton, which involved the occupants of a car, drew a "bright line" between the passenger compartment and the trunk. This distinction was cogently explained by Justice Powell:

> "The occupants of an automobile enjoy only a limited expectation of privacy in the interior of the automobile itself. See Almeida-Sanchez v. United States, 413 U.S. 266, 279 (1973) (Powell, J., concurring). This limited interest is diminished further when the occupants are placed under custodial arrest. Cf. United States v. Robinson, 414 U.S. 218, 237 (1973) (Powell, J., concurring). Immediately preceding the arrest, the

> the passengers have complete control over the entire interior of the automobile, and can place weapons or contraband into pockets or other containers as the officer approaches. Thus, practically speaking, it is difficult to justify varying degrees of protection for the general interior of the car and for the various containers found within. These considerations do not apply to the trunk of the car, which is not within the control of the passengers either immediately before or during the process of arrest." Robbins v. California, supra, 453 U.S. at 431-432.

By contrast, defendants were in close physical proximity to the trunk; indeed, they had opened it to place the suitcases within it. Unlike the arrestees in a Belton-type situation, the defendants had direct access to, and control of, the open trunk. The suitcases were in their immediate reach within the meaning of Chimel.

But Castleberry did not do as he was instructed, choosing instead to

lock the trunk and place the Band-Aid box in the passenger compartment, which he also locked. According to the Oklahoma Court of Criminal Appeals, the act of locking the car and trunk activated the warrant requirement of the Fourth Amendment.

In the context of this case, we can think of no viable social or legal policy which is advanced by conferring the highest possible protection of the Fourth Amendment upon an arrestee for refusing to obey a lawful order of a police officer. If Castleberry had followed the officer's instructions, the warrantless seizure and search would have occurred as a matter of course. But we do not believe that Castleberry's decision to make things difficult invalidated the officer's conduct. Our reading of this Court's cases, as applied to this situation, yields this

rule. The legality of warrantless search may not be defeated by the arrestee's purposeful placement of the object to be searched out of the reach of the officer in response to his lawful approach. Just as the defendant in United States v. Santana, 427 U.S. 38 (1976), could not avoid a lawful warrantless arrest by retreating inside her home when the police caught to arrest her, so the defendants in this case could not avoid a lawful incident search by the expediency of locking the car.

We do not mean to suggest, however, that if defendants had placed the suitcases in their motel room and locked the door as the officers closed in to make the arrest, the officers could have entered and searched without a warrant. It well may be that the sanctity of the dwelling place must, in the absence of exigent circumstances

(Warden v. Hayden, 387 U.S. 294, 298-300 [1967]), be given the traditional protection of the search warrant requirement. "Belief, however well founded, that an article sought is concealed in a dwelling place furnishes no justification for a search of the place without a warrant." Agnello v. v. United States, 269 U.S. 20, 33 (1925); cf. Vale v. Louisiana, 399 U.S. 30 (1970).

But the containers were placed in a vehicle, which is surrounded by a reduced expectation of privacy. United States v. Chadwick, supra, 433 U.S. at 12. The officers had the right to enter the car to remove the receptacles. See Arkansas v. Sanders, supra, 442 U.S. at 761; United States v. Chadwick, supra, 433 U.S. at 13; cf. United States v. Place, 462 U.S. 696 (1983). Given the right of the officers to seize the

containers before and after the arrest, and the right to search the receptacles before the trunk and car door were closed, there is no reason in law or common sense why the suitcase and Band-Aid box could not be searched as an incident to the arrest after their removal from the car. Cf. United States v. Bradley, 455 F.2d 1181, 1187 (1st. Cir. 1972), aff'd on other issues, 410 U.S. 605 (1973).

The foregoing position is not inconsistent with this Court's prior cases. United States v. Chadwick, supra, did not involve an arguably valid search incident to a lawful custodial arrest: "Here the search was conducted more than an hour after federal agents had gained exclusive control of the footlocker and long after respondents were securely in custody; the search therefore cannot be viewed as incidental to the arrest or as

justified by any other exigency." 433 U.S. at 15; see New York v. Belton, supra, 453 U.S. at 462.

Candidly, we are troubled by Chadwick's rationale. It would appear to be inconsistent with this Court's declaration that "searches and seizures that could be made on the spot at the time of arrest may legally be conducted later when the accused arrives at the place of detention." United States v. Edwards, 415 U.S. 800, 803 (1974); accord, Abel v. United States, 362 U.S. 217 (1960). It was further undermined by Illinois v. Lafayette, 462 U.S. 640 (1983), which upheld a booking search of possessions found on an arrestee. Finally, it is difficult to reconcile the Chadwick-Belton distinction with the holding of Chambers v. Maroney, 399 U.S. 212 (1970), which is that a vehicle subject to search on

the street may be removed and inspected at the station house. In light of Edwards, Abel, Lafayette, and Chambers, we submit that the search in Chadwick should have been upheld if a search on the street was proper. Conversely, the holding in Chadwick was correct if a search of the trunk at the time of arrest would have been unlawful.

We think that a warrantless search of the trunk would have been unlawful at any time. In Chadwick, it will be recalled, Government officials had planned the search for two days, the period during which two of the defendants traversed the country by train, disembarking in Boston, where the trunk was searched hours later. Presumably, a warrant, whose issuance was "reasonably predictable" (433 U.S. at 15), could have been obtained during that period of time. Cf. Coolidge v. New Hampshire, 403 U.S.

443, 471 (1971) ("we deal here with a planned warrantless seizure"). Unlike the typical arrest, involving a suspect and its probable contents. The use of the dog in the train station confirmed what arguably already amounted to probable cause. Cf. United States v. Place, supra.

In this case, by contrast, police were forced to act quickly before the defendants could drive away from the motel. Their warrantless arrest and the incidental search of their effects were entirely proper.

In Sanders v. Arkansas, supra, the arrest and search did not occur until after the defendant had placed the suitcase containing marijuana in the trunk of the taxicab and had driven away. This Court stated that it did not "consider the constitutionality of searches of luggage incident to the

arrest of its possessor. [Citation omitted.] The State has not argued that respondent's suitcase was searched incident to his arrest, and it appears that the bag was not within his 'immediate control' at the time of the search." 442 U.S. at 764 n. 11. Since the defendants in this case were arrested before they entered their car and had access to their possessions before Castleberry voluntarily locked the car door and trunk, Sanders is obviously distinguishable.

(3)

The position of amicus is thus consistent with this Court's cases and is faithful to its admonition that "[t]here is no war between the Constitution and common sense." Mapp v. Ohio, 367 U.S. 643, 657 (1961). We doubt that "society is prepared to recognize as 'reasonable'" (Katz v. United States, 389 U.S. 347, 361

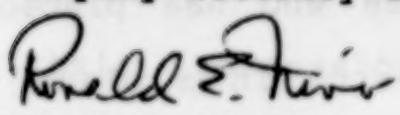
[1967] [Harlan, J., concurring]) an expectation of privacy which is formulated in the face of an attempt by police officers to effect a lawful custodial arrest and valid incidental search. We therefore submit that the legality of a warrantless search may not be defeated by the efforts of the arrestee who has placed the object of the search in a place to which police have otherwise lawful access.

CONCLUSION

For the foregoing reasons, the Judgment of the Oklahoma Court of Criminal Appeals should be reversed.

DATED: December 20, 1984

JOHN K. VAN DE KAMP,
Attorney General of
the State of California
ROBERT R. GRANUCCI
Assistant Attorney General
CLIFFORD K. THOMPSON, JR.
Deputy Attorney General



RONALD E. NIVER
Deputy Attorney General

Attorneys for Petitioner

CERTIFICATE OF SERVICE BY MAIL

THE STATE OF OKLAHOMA, Petitioners, vs. TIMOTHY R. CASTLEBERRY AND NICHOLAS RAINERI, Respondents.	No. 83-2126

RONALD E. NIVER, a member of the Bar of the Supreme Court of the United States, states:

That his business address is 6000 State Building in the City and County of San Francisco, State of California; that on December 21, 1984, he served true copies of the attached Brief for the People of the State of California as Amicus Curiae on Writ of Certiorari to the Oklahoma Court of Criminal Appeals in the above-entitled matter on counsel for respondents by placing same

in envelopes addressed as follows:

Michael C. Turpen
Attorney General of Oklahoma
Hugh A. Manning
Assistant Attorney General
112 State Capitol Bldg.
Oklahoma City, Ok. 73105

C. Kent Eldridge
800 N.W. 13th Street
Oklahoma City, Ok. 93103

Said envelopes were then sealed and deposited in the United States mail at San Francisco, California, with the postage thereon fully prepaid.

RONALD E. NIVER
Deputy Attorney General